atx
COMMUNICATIONS
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January 22, 2003

Ex Parte

The Honorable Kevin Martin
Commissioner
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Ex Parte Submission
CC Docket No. 01-338

Dear Commissioner Martin:

Thank you again for taking the time to meet with me and my colleagues.

During our meeting as part of the PACE Coalition, you expressed concern that the Commission's existing rules might be encouraging CLECs to rely on the UNE-Platform instead of using their own switching facilities. Because this issue arose late in our meeting, I was unable to fully explain to you how ATX Communications competes using a blend of its own facilities and the UNE-Platform leased from the incumbent LEC. I am writing you to clarify when – and, importantly, why – ATX uses its own local switching facilities to serve some customers, but not others.

To begin, let me assure you that the FCC's rules in *no way* discourage ATX from deploying and using its own facilities where ILEC technical proficiency enables us to do so efficiently and where economies of scale make facility ownership feasible. Rather, what ATX and other CLECs have learned is that there are today technical barriers to serving analog line customers using CLEC facilities that are mitigated only through access to UNE-P. As a result, ATX has evolved to incorporate a mixed-strategy business plan, using our own facilities to provide digital services (i.e., services that require a DS-1 or higher loop connection) to business customers, and relying on UNE-P to compete for the analog lines of the residential and business customers that we serve.

Importantly, ATX is continuing to invest in switching equipment for the customer segment that can be served efficiently through such ATX-owned facilities – a process that would *not* be possible if it were not for the additional revenues, scale and common-cost support provided by our UNE-P operations. Any decision that denies access to unbundled local switching to serve analog customers would effectively cede this critical customer segment to the incumbent, providing the incumbent a "locked-in" base of customers and revenues that it would inevitably exploit in other areas.

There is no valid policy or legal rationale for the Commission to deny residential and small business customers competitive choice. Nor would it be reasonable for the Commission to use its Triennial review to award the incumbent a *de facto* analog monopoly when the unmistakable purpose of the Telecommunications Act of 1996, as well as the Commission's implementing regulations, was to accomplish the opposite result. The Commission cannot "wish away" the fundamental impairment that constrains ATX (and other carriers) – the incumbent LECs' inability to convert analog customers to CLEC switches without unacceptable levels of service disruption – in the hope that alternatives will fill the void created by the premature elimination of access to unbundled local switching. Unbundled local switching -- and the UNE-P combination it makes possible -- is the solution, not the problem, and there is compelling evidence that (at least with regard to analog customers) it deserves to remain on the national minimum list of unbundled network elements.

The ATX Network

ATX is a publicly-traded company which, through various wholly-owed subsidiaries, provides local and long distance telephone, Internet access, high-speed data, and other communications services to approximately 400,000 residential and business lines across several Midwest and Northeastern states. Tracing its roots back to 1985, the Company was forged through the merger of two competitive telecommunications companies, CoreComm Limited and ATX Telecommunications Services, Inc. Prior to the merger, each of these companies had focused on a different region of the country. CoreComm focused on serving customers in the upper Midwest in the area served by Ameritech, while ATX competed in the Northeast in the exchanges served by (what is now) Verizon. Despite these differences, the market lessons learned by each were remarkably similar.

CoreComm's initial business strategy was to compete for residential and business customers using resale[1] to build a subscriber base while concurrently deploying its own facilities, with the intention of migrating its resale customers to its own local Class 5 switches. The ATX strategy was more focused on business customers, but still with the intention of serving customers on its own Class 5 switching facilities. As a result of the merger, the combined group of companies owns state-of-the-art, Class 5 switches in Columbus and Cleveland Ohio, Chicago, Illinois and Philadelphia, Pennsylvania.

Perhaps most relevant to our discussion, ATX is currently installing an additional Class 5 switch in Herndon, Virginia, (presently targeted for operation in around March, 2003) and an additional Class 5 facility in downtown Philadelphia. As I explain below, ATX has learned (as have most other CLECs that ATX is familiar with) that local switching facilities *can* be used to compete for larger customers desiring high-speed digital services, while unbundled local switching is appropriate to serve the needs of smaller analog customers.

Far from discouraging ATX from investing in its own switching, it is the availability of unbundled local switching that provides the scale economies that enable ATX to continue its

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[1] It is useful to remember that Ameritech would not permit CoreComm to use UNE-P until early in 2001 and even once UNE-P was made available Ameritech continued to refuse to let carriers carry intraLATA toll on shared transport. See "In the Matter of CoreComm Communications, Inc. and Z-Tel/Communications, Inc. vs. SBC et.al," FCC File No. EB-01-MD-017.

investment in its own local switches. Unbundled local switching and switch-investment are complimentary elements of our business strategy that depend upon one another, for each is suited to a different customer segment, both of which ATX must serve to survive.

The ATX Lesson

ATX learned its local competition lessons the hard way – by attempting a variety of strategies, learning what worked and, just as importantly, what didn't.

As I indicated earlier, both CoreComm and ATX (pre-merger) intended to migrate analog customers that were initially served through resale to our own switching facilities. During 2000 and into 2001, CoreComm began this process in the Ameritech region using its state of the art EDI interfaces, which had been built at considerable cost specifically for the purpose of interacting with Ameritech at commercial volumes. What we learned was that Ameritech's operational support systems, including its loop-migration systems, were neither reliable nor scaleable, with cut-over procedures so convoluted as to be commercially impractical. Indeed, the problems were so bad that we had to create special processes to handle the conversions on a "special project" basis, with Ameritech limiting the orders to only a few hundred per week. Even at these reduced processing levels, many of our analog customers suffered disruptions of service when we tried to have the incumbent convert them to our switch. Ultimately, we had no commercial choice but to abandon these efforts. Because of our first-hand experience attempting to migrate analog lines, our ATX operation established collocation facilities in the Verizon region initially equipped to serve exclusively DS-1 customers. Our experience is not unique – to ATX's knowledge, virtually all CLEC switches are today focused on serving DS-1 customers. The effort to provision a DS-0 onto a CLEC switch under the current RBOC cut-over procedures is simply too costly and fraught with peril to accomplish at a commercial level.

As you are aware, incumbent LECs periodically claim that CLECs are not be impaired in their ability to serve the analog market as demonstrated by the fact that there are CLEC switches serving analog lines today.[2] However, based on our experience, we know that the asserted conclusion does not follow from the premise. While ATX serves some of its analog customers from its own switches, the ILEC conversion process that transferred those customers was commercially disastrous and has cost us many customers. Most importantly, as illustrated above, legacy analog loops from past efforts (such as that recounted above) offer no support to the ILECs' claims in this regard. We do not plan to ask ILECs to convert any more of our analog customers to an ATX switch until the ILECs learn how to perform these transfers competently and cost effectively. The Commission's local competition report indicates that unbundled loops of *all* kinds (analog and digital) have gained only 2.1% of the local market after more than six years of competition,[3] while the penetration of unbundled analog loops is much smaller.

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[2] *See*, for instance, the so-called "UNE Fact Report" filed by each of the RBOCs in this proceeding.

[3] It is useful to remember that unbundled loop-based local competition preexisted the Telecommunications Act of 1996 in many states due to the pioneering efforts of State Public Utility Commissions. It is critical that State Commissions continue to have the ability to promote competition in the manner most consistent with their enabling legislation and the forms of retail rate regulation that have been adopted largely in *anticipation* of local competition. Having promised entrants unbundled access to their networks *twice* – i.e., once to many state commissions/legislatures in order to gain relaxed retail regulation, and then again to the Congress to obtain interLATA authority under Section 271 of the Act – it is time that the RBOCs deliver on their promise at least *once*.

The Bottom Line

ATX has tried to compete using the "model" strategy that the incumbents recommend – combining stand-alone loops with its own switching facilities. We have clearly learned that the strategy *does* work to compete for DS-1 based services – and we have learned that it *does not* work for analog customers. If the incumbents are so convinced of the economic viability of their approach, ATX stands willing to sell switching capacity to any out-of-region ILEC that would like to prove us wrong through their actual commercial behavior and investment, rather than the claims of their regulatory lawyers.

But we are not wrong. There are far too many operational, financial and economic impairments in the analog world today for mass-market switch-based competition to succeed. There are two customer segments that can best be served through differing strategies. As Chairman Lila Jaber of the Florida Public Service Commission recently wrote you after her staff evaluated conditions in the Florida market:

> Our staff believes and I agree ... end users served via UNE-P and end-users served by facilities-based provisioning may, in fact, constitute two different markets.... I believe a strong case can be made that UNE-P and facilities-based access lines are really two distinct markets with very limited crossover.
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> In conclusion, a UNE-P transition plan based solely on a CLEC having its own switch does not appear to be appropriate at this time. There are other considerations, such as UNE-P migration costs and population density, that must be overcome in order to provide carriers an economic incentive to transition from UNE-P to facilities-based.[4]

We at ATX firmly believe that while we have the economic incentive to rely on facilities wherever possible, what we lack is a commercially reasonable economic opportunity to do so for analog lines. This does not mean, however, that we expect to rely heavily on ILEC switching indefinitely, particularly in the business market. As I indicated above, ATX uses its switches to compete for those businesses that justify and/or require digital services. Significantly, the "digital segment" of the business market is rapidly expanding. In 1996, only 3.7% of Verizon's business lines in Pennsylvania were digital; by 2001, just 5 years later, more than 37% of Verizon's business lines had migrated to digital facilities.[5] There is a natural, market-driven, change underway that requires that ATX (as well as other CLECs) invest in the new technologies needed to serve this growing – and soon to be controlling – customer segment.

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[4] Letter from Lila Jaber, Chairman, Florida Public Service Commission, to Kevin Martin, Commissioner, Federal Communications Commission, *Ex Parte,* CC Docket 01-338, December 6, 2002.

[5] Source: ARMIS 43-08, Table III, Lines by Customer.

ATX would not, however, be able to compete for all customers in its regions without the ability to use UNE-P to compete in the analog market. As I indicated earlier, ATX is presently installing Class 5 switching facilities in Herndon, Virginia and Philadelphia, Pennsylvania, which is possible only because of the cash-flow and joint-cost recovery made available by UNE-P. Second, and equally important, today's analog customer is tomorrow's digital customer. The best way for ATX to position for the future is to successfully compete in the market as it stands today. Eliminating access to unbundled local switching for analog customers will not make those customers digital, it will not enable ATX to serve those customers differently, it will only leave them with no choice but to return to the incumbent's monopoly.

Sincerely,

Michael A. Peterson
Executive Vice President -
Chief Operating Officer & Chief
Financial Officer